

1 THOMAS C. HORNE
Attorney General
2 (Firm State Bar No. 14000)

3 MONTGOMERY LEE
Assistant Attorney General
4 State Bar No. 005658
1275 W. Washington, CIV/LES
5 Phoenix, Arizona 85007-2997
Tel: (602) 542-7980
6 Fax: (602) 364-3202

2014 SEP 19 AM 11 29

7 Attorneys for the Arizona State Board of Pharmacy

8 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**
9

10 In the Matter of

11 **LYLE BRAUNER**

12 Holder of License No. S013725
As a Pharmacist
13 In the State of Arizona.

Board Case No. 15-0003-PHR

**CONSENT AGREEMENT
FOR PROBATION, CIVIL
PENALTY AND CONTINUING
EDUCATION**

14
15 In the interest of a prompt and judicious settlement of this case, consistent with the
16 public interest, statutory requirements and the responsibilities of the Arizona State Board
17 of Pharmacy ("Board") under A.R.S. § 32-1901, *et. seq.*, Lyle Brauner ("Respondent"),
18 holder of Pharmacist License No. S013725 in the State of Arizona and the Board enter
19 into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent
20 Agreement") as a final disposition of this matter.
21

22 **RECITALS**

23 1. Respondent has read and understands this Consent Agreement and has had
24 the opportunity to discuss this Consent Agreement with an attorney, or has waived the
25 opportunity to discuss this Consent Agreement with an attorney.
26

1 2. Respondent understands that he has a right to a public administrative
2 hearing concerning this matter at which hearing he could present evidence and cross
3 examine witnesses. By entering into this Consent Agreement, Respondent knowingly
4 and voluntarily relinquishes all right to such an administrative hearing, as well as rights
5 of rehearing, review, reconsideration, appeal, judicial review or any other administrative
6 and/or judicial action, concerning the matters set forth herein.

7 3. Respondent affirmatively agrees that this Consent Agreement shall be
8 irrevocable.

9 4. Respondent understands that this Consent Agreement or any part of the
10 agreement may be considered in any future disciplinary action by the Board against him.

11 5. Respondent understands this Consent Agreement deals with Board
12 Complaint No. 4237 involving allegations of unprofessional conduct against Respondent.
13 The investigation into these allegations against Respondent shall be concluded upon the
14 Board's adoption of this Consent Agreement.

15 6. Respondent understands that this Consent Agreement does not constitute a
16 dismissal or resolution of any other matters currently pending before the Board, if any,
17 and does not constitute any waiver, express or implied, of the Board's statutory authority
18 or jurisdiction regarding any other pending or future investigation, action or proceeding.

19 7. Respondent also understands that acceptance of this Consent Agreement
20 does not preclude any other agency, subdivision, or officer of this State from instituting
21 any other civil or criminal proceedings with respect to the conduct that is the subject of
22 this Consent Agreement.

23 8. Respondent acknowledges and agrees that, upon signing this Consent
24 Agreement and returning this document to the Board's Executive Director, he may not
25 revoke his acceptance of the Consent Agreement or make any modifications to the
26

1 document regardless of whether the Consent Agreement has been signed by the
2 Executive Director. Any modification to this original document is ineffective and void
3 unless mutually agreed by the parties in writing.

4 9. This Consent Agreement is subject to the approval of the Board and is
5 effective only when accepted by the Board and signed by the Executive Director. In the
6 event that the Board does not approve this Consent Agreement, it is withdrawn and shall
7 be of no evidentiary value and shall not be relied upon nor introduced in any action by
8 any party, except that the parties agree that should the Board reject this Consent
9 Agreement and this case proceeds to hearing, Respondent shall assert no claim that the
10 Board was prejudiced by its review and discussion of this document or any records
11 relating thereto.

12 10. If a court of competent jurisdiction rules that any part of this Consent
13 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement
14 shall remain in full force and effect.

15 11. Respondent understands that this Consent Agreement is a public record that
16 may be publicly disseminated as a formal action of the Board and may be reported as
17 required by law to the National Practitioner Data Bank and the Healthcare Integrity and
18 Protection Data Bank.

19 12. Respondent understands that any violation of this Consent Agreement
20 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-
21 1901.01(B) (20) and A.R.S. § - 1927(A) (1).

22 13. Respondent agrees that the Board will adopt the following Findings of Fact,
23 Conclusions of Law and Order.

24 ...

25 ...

26 ...

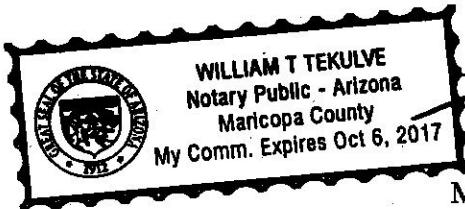
1 ACCEPTED AND AGREED BY RESPONDENT

2 

Dated: 9/16/2014

3
4 Lyle Brauner

5 Subscribed and sworn to before me in the County of Maricopa, State of Arizona
6 this 16 day of September, 2014, by Lyle Brauner.



9 NOTARY PUBLIC

10 My Commission expires: 10-06-2017

11 **FINDINGS OF FACT**

12 1. The Board is the duly constituted authority for licensing and regulating the
13 practice of pharmacy in the State of Arizona.

14 2. Respondent is the holder of license number S013725 to practice as a
15 pharmacist in the State of Arizona.

16 3. During all relevant times to these findings, Respondent worked as a
17 pharmacist and was the pharmacist-in-charge at Phoenix Children's Hospital Outpatient
18 Pharmacy (the "Pharmacy") located at 1919 E. Thomas Rd., Phoenix, Arizona.

19 4. On or about May 16, 2014 through June 2, 2014 Pharmacy Board
20 compliance officers received information regarding possible violations by Respondent
21 relating to supervision of compounding technicians and improper compounding practices.

22 5. On or about June 2, 2014 Pharmacy Board compliance officers conducted
23 and an inspection of the Pharmacy and interviewed Respondent regarding the possible
24 violations.
25
26

1 6. During the inspection on June 2, 2014 Pharmacy Board compliance officers
2 reviewed Respondents' records for compounding Etoposide and found that despite
3 having records evidencing seven (7) compounded preparations prior to May 9, 2014, the
4 Pharmacy had no recipe record for that substance prior to May 9, 2014.

5 7. During the inspection on June 2, 2014 Pharmacy Board compliance officers
6 found that necessary equipment and protective apparel including ventilation hoods and
7 gowns were not provided for the compounding of hazardous substances at the Pharmacy.

8 8. During the inspection on June 2, 2014 Pharmacy Board compliance officers
9 requested that Respondents provide records including a new employee check list for
10 technician E. S. and a copy of the program used to train technicians employed by
11 Respondents who perform compounding activities. Respondents were unable to provide
12 Pharmacy Board compliance officers with these documents as requested.

13 9. During the inspection on June 2, 2014 Pharmacy Board compliance officers
14 reviewed the compounding logs for nine (9) preparations containing at least one
15 hazardous products and noted numerous entries lacking documentation of the technician
16 or pharmacist who prepared and the pharmacist who verified the compounded
17 preparation.

18 10. During the inspection on June 2, 2014 Pharmacy Board compliance officers
19 interviewed pharmacist Jacqueline Cavanagh who worked at the Pharmacy under
20 Respondent's direction and who admitted that on some occasions she would not verify
21 compounds prepared by technicians, but would verify compounds with product or
22 quantity changes.

23 CONCLUSIONS OF LAW

24 1. The Board possesses jurisdiction over the subject matter and over
25 respondent pursuant to A.R.S. § 32-1901 *et seq.*
26

2. The Board may discipline a pharmacist for engaging in unprofessional conduct. A.R.S. § 32-1927(A) (1).

3. The conduct and circumstances described above constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B) (2) (Violating a federal or state law or regulation relating to the manufacture or distribution of drugs or devices or the practice of pharmacy).

4. The conduct and circumstances described above constitutes unprofessional conduct by violating A.A.C. R4-23-410 (C) (1).

ORDER

Based upon the above Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED THAT Respondent shall:

1. Respondent's Pharmacist License No. S013725 is hereby placed on **PROBATION** for a period of one year upon the adoption of this Consent Agreement by the Board. During the period of **PROBATION**, Respondent is not restricted from being employed as a Pharmacist-In-Charge at any pharmacy and may be employed as a Pharmacist-In-Charge at any pharmacy.

2. Pay a civil penalty of \$5,000.00 within **180 days** of the effective date of this Order; and

3. Successfully complete and provide proof of successful completion to the Board of a training course in compounding. The required course(s) must be completed within **180 days** of the effective date of this Order, must be pre-approved by Board staff, and shall be in addition to the requirements of A.R.S. § 32-1936 and A.A.C. R4-23-204.

4. Respondent shall pay all costs associated with complying with this Consent Agreement.

1 5. If Respondent violates this Order in any way or fails to fulfill the
2 requirements of this Order, the Board, after giving the Respondent notice and the
3 opportunity to be heard, may revoke, suspend or take other disciplinary actions against
4 Respondent's license. The issue at such a hearing will be limited solely to whether this
5 Order has been violated.

6 6. If Respondent pays the \$5,000.00 civil penalty in paragraph 2 of this Order
7 and satisfies the education requirements of paragraph 3 of this Order before the end of the
8 one year probationary period, he may request in writing after six months from the date of
9 this order that the Board terminate the **PROBATION**. Respondent's request to terminate
10 probation will be considered at the next regularly scheduled Board meeting. Respondent
11 is required to personally appear at that Board meeting.

12
13 DATED this 23 day of October, 2014.

14
15 (Seal)

ARIZONA STATE BOARD OF PHARMACY

16
17
18
19 By: 

HAL WAND, R.Ph.
Executive Director

1 ORIGINAL OF THE FORGOING FILED
2 this 23 day of October, 2014, with:

3 Arizona State Board of Pharmacy
4 1616 W. Adams Street
5 Phoenix, Arizona 85007

6 EXECUTED COPY OF THE FOREGOING MAILED
7 BY CERTIFIED MAIL

8 this 23 day of October, 2014, to:

9 Lyle Brauner
10 7211 N. 13th Way
11 Phoenix, Arizona 85020
12 Respondent

13 Steven B. Perlmutter
14 PERLMUTTER MEDICAL LAW, LLC
15 8655 E. Via De Ventura, Suite G-200
16 Scottsdale, Arizona 85258
17 Attorney for Respondent

18 EXECUTED COPY OF THE FOREGOING MAILED
19 this 23 day of October, 2014, to:

20 Montgomery Lee
21 Assistant Attorney General
22 1275 W. Washington Street, CIV/LES
23 Phoenix, Arizona 85007
24 Attorney for the Board

25 up
26 Doc #4138464